

No. 13-0899 RS

Alcatel Lucent USA, Inc., (“Alcatel”) filed its complaint on May 21, 2013. The Director filed his answer on June 18, 2013. The Director served Alcatel with discovery on July 3, 2013, and filed a motion to compel answers to that discovery on August 26, 2013. We granted the Director’s motion and ordered Alcatel to respond to the discovery on or before September 26, 2013. Alcatel has not responded to our order. The Director filed a motion to dismiss on September 27, 2013. We gave Alcatel until October 10, 2013, to respond to the motion, but it filed nothing.

We may dismiss an action as a sanction.<sup>1</sup> We may involuntarily dismiss an action based on a preponderance of the admissible evidence.<sup>2</sup> We base our findings of fact on the records in this Commission's file.

### **Findings of Fact**

1. Alcatel filed its complaint on May 21, 2013. Its complaint states that it is a corporation.
2. Alcatel did not respond to our order to reply to the Director's discovery requests and did not respond to the Director's motion to dismiss.
3. We informed Alcatel on May 24, 2013, August 28, 2013, and September 30, 2013, that Alcatel must have an attorney to participate further in this case.
4. No attorney has entered an appearance for Alcatel.

### **Conclusions of Law**

We may impose sanctions on a party for failing to comply with any order or rule of this Commission.<sup>3</sup> Sanctions are appropriate here because we ordered Alcatel to respond to the Director's discovery, and instructed Alcatel three times to retain an attorney in compliance with our regulations, and Alcatel failed to do so.

Alcatel filed this case itself, but never retained an attorney despite the fact that this Commission informed Alcatel three times that it need to do so. Under our regulations, only a licensed attorney may represent a corporation or other legal entity.<sup>4</sup> Presumably, Alcatel's lack of an attorney prevented it from preparing and filing responses to the Director's discovery requests and its response to the Director's motion to dismiss. By failing to retain an attorney to represent it, Alcatel has made it impossible for this action to continue.

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<sup>1</sup> 1 CSR 15-3.436(1)(C).

<sup>2</sup> 1 CSR 15-3.346(3).

<sup>3</sup> 1 CSR 15-3.425(1)(A).

<sup>4</sup> 1 CSR 15-3.250(3); *Reed v. Labor and Indus. Relations Comm'n*, 789 S.W.2d 19, 21 (Mo. 1990).

We therefore sanction Alcatel by dismissing this action.<sup>5</sup>

**Summary**

We dismiss this case as a sanction for Alcatel's failure to comply with our order dated September 11, 2013, and for its failure to retain an attorney.

SO ORDERED on October 18, 2013.

*\s\ Sreenivasa Rao Dandamudi*

SREENIVASA RAO DANDAMUDI  
Commissioner

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<sup>5</sup> The Director states in his motion to dismiss that "Oliver Strubble of Alcatel informed the Director's counsel that Alcatel will no longer continue with its refund claim and would like the appeal closed." Motion at ¶7. Although we do not doubt the Director, we may rely only on admissible evidence to rule on a motion for involuntary dismissal. 1 CSR 15-3.436(3). A bare statement in a party's motion is not "admissible evidence" under that regulation.